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MORNING SESSION

Saturday, April 25, 1908

The meeting was called to order at 10 o'clock a. m. by Vice-President General Horace Porter.

The CHAIRMAN. Gentlemen, the meeting will come to order.

I shall first call upon Professor Wilson, of Brown University, so well known in connection with the admirable work that he has accomplished at the Naval War College, who will speak to us about the work of that college in connection with the codification of international law.

ADDRESS OF MR. GEORGE G. WILSON,
OF PROVIDENCE, R. I.

Mr. Chairman, Ladies, and Gentlemen: The United States Naval War College is in Newport. It was established in 1884. Rear-Admiral (then Commodore) S. B. Luce, who had foreseen the necessity of such an institution, was its first president, and has been permitted to live to see even more than his early ideal realized. His successors in the office of presidency include Admirals Mahan, Taylor, Goodrich, Stockton, Chadwick, Sperry, and Admiral Merrell, the present head of the college.

The Naval War College is not a college in the sense in which that term is ordinarily used in the United States. At the Naval War College there is no division into teachers and taught. All are alike students of the science and art of war. All are instructors. When it is considered that the officers brought together at the Naval War College have almost without exception seen long service, the youngest officer at the college in 1907 having been in active service twelve years after graduation from Annapolis and the average term of service of those present being thirty years each, the value of the conferences of such men upon professional affairs can easily be under-

stood. In addition to these, certain army officers join actively in the conferences in order that no point of view may be neglected.

These officers of mature years and of varied experience unite in considering the most important questions bearing on maritime warfare. The college becomes, as has well been said, "a place of original research upon all questions relating to war and to statesmanship connected with war, or the prevention of war." Here is fully realized the *truth* of Washington's maxim, "To be prepared for war is the most effectual means to promote peace," and here is realized the *falsity* of the ancient maxim that "war is the best school for war," which Admiral Luce calls "one of those dangerous and delusive sayings that contains just enough truth to secure currency; the one who waits for war to learn his profession often acquires his knowledge at a frightful cost of human life."

The necessity for the existence of such a college has been realized in other countries as well as in the United States, and following the example of the United States institutions of similar character have been established.

The early years of an officer's training prepare him for the handling of a single ship. In the multitudinous duties connected with such a command there is little opportunity even for the most ambitious officer to consider broad questions of naval science and policy. It was formerly the case that officers had little or no opportunity to consider together the problems involved in the great interests intrusted to them, the problems consequent upon the changes in ships, armaments, and projectiles, and the problems arising from the readjustment of international relations. Even if the officers had come together from time to time, the results of their labors might easily be lost if there were no place at which the results of their work might be preserved and coordinated. The Naval War College furnishes the conditions under which conferences of officers of the higher grades may be productive of the greatest benefit. The topics ordinarily considered relate to battle tactics, strategy of the fleet, and unsettled questions of international law. These topics are selected in advance as seems desirable from the course of events, or from questions referred by officers in all parts of the world to the

staff of the War College. The available information upon the subjects to be considered is gathered at the War College. The special library of the War College and its archives, maps, and plans are available for the conferences. The results of the conferences of a given year are preserved in the files and are thus immediately available for the officers assembling in conference in following years. Many questions from the Navy Department may be answered at once from the archives and files of the War College, as it is the purpose of the War College to anticipate questions and situations which may arise.

This is the general character of the work of the Naval War College. None of the work shows a desire for war, but all gives evidence of a desire to be prepared to wage effective, and just war, if war arises.

A president of the War College has recently written of the work in international law as follows:

A portion of the work of the War College of grave importance is the discussion of questions of maritime international law, particularly in the matter of insurgency and the respective rights and duties of neutrals and belligerents. That portion of the law embodied in the form of international conventions and agreements is very limited, and beyond that the law must rest upon precedents and justice. Under such peculiar conditions the discussion of the proper course of action in a case where the law has not been settled requires not only the services of one familiar with the law and precedent, but it also requires the advice of those capable of judging of military necessities and the nature and bearing of precedents. For instance, the tendency is toward increasing respect for private property, but an excessive respect for property rights may result in prolonging a war at the expense of untold suffering. If a belligerent, rather than disturb a neutral submarine telegraphic cable — a damage which can be paid in coin — permits a crushing blow which would end the war to miscarry, he is guilty of the grossest inhumanity.

Fully appreciating this state of affairs, the conference of officers, most of whom during their long career have been called upon at one time or another to decide quickly what must be done to save life and property, devotes a large portion of its time for four months to the discussion of cases of living and urgent interest, with the aid of a lecturer, the resulting opinions being formulated and published as a guide for the officers of the Navy.

The accepted and formulated law can be acquired at leisure, but such work as the above can not be done in the closet.

The method of handling topics relating to international law is as follows: The questions are formulated before the opening of the conference by some person familiar with international law, in consultation with the president and staff of the college. When the conference assembles, the officers are divided into committees. The questions in international law are submitted to each committee. These committees, without consultation with each other, submit reports upon the several topics. These reports are considered by the one advising upon international law and are then fully and freely discussed in a conference participated in by all the officers gathered at the War College. The questions are necessarily considered from all points of view, as the officer may be called upon in actual service to face such problems when the United States may be a neutral, a belligerent on the offensive, or a belligerent on the defensive. The conclusions of the conference may therefore be fairly held to be without bias. The topics considered in a given year will give an idea of the range of discussion of the conference. In 1901 the topics considered by our distinguished colleague, Prof. John Bassett Moore, at the War College were Coast Warfare, particularly the bombardment of unfortified towns; Contraband, involving the doctrine of continuous voyage; Transportation of Military Persons; Neutrals; and Enemy Convoy, Insurgents, and Contraband. The topics considered at the recent conference of 1907 were as follows: Fugitives from Justice in Leased Territory, Status of Auxiliary Vessels in Foreign Harbors, Right of Captured Vessel to its Flag, Resistance to Capture, Destruction of Neutral Vessels, Violation of Blockade, Carriage of Contraband, Collier Service, Insurgency and Carriage of so-called Contraband, Wireless Telegraphy. The aim from year to year has been to anticipate questions which may arise in regard to which there may be uncertainty or entire lack of precedent, and to give a solution to these questions, which so far as possible shall be in accord with broad principles and without partiality. Such work must necessarily precede the codification of law, for codification is not so necessary when all states and authorities are in

agreement as to the proper course of action under the given circumstances.

However, the Naval War College has taken an active interest in the formulation and codification of international law. In 1899 Captain Stockton, then president of the Naval War College, in accordance with instructions from the Secretary of the Navy, entered upon the preparation of a naval war code which should serve for the Navy the purpose which Dr. Lieber's code, published in 1863, had served for the Army. Captain Stockton consulted with various officers of the Navy and with several civilians who were interested and familiar with the maritime international law of war. The preliminary draft of the code prepared by Captain Stockton was sent out with the following memorandum:

The regulations respecting the laws and usages of war at sea, a preliminary draft of which is herewith forwarded, are proposed, primarily, to be put in force for the Navy of the United States. For that reason, and on account of our existing laws in regard to privateers and the capture of enemy merchant vessels, the articles relating to privateers and letters of marque, and to the capture and destruction of private property at sea, are included in the code.

If the code should be presented to other countries as an international *projet*, it is presumed that these articles would be omitted or modified, in view of our adherence to the Declaration of Paris during the late war and of the stand, as to the capture of private property at sea, taken by the President of the United States in a recent message and in his instructions to our representatives at the Hague Conference.

The regulations for the laws of war upon land, adopted at the Hague Conference, cover a number of subjects that are applicable to the naval service afloat and ashore, such as those bearing upon matters of prisoners, spies, military occupation, etc., and hence these matters are not included in the naval code, which extends, by article 55, the authority of the laws of war to the naval service, when applicable and when not in conflict with the proposed naval code. These regulations for land warfare, as adopted at The Hague, accompany this memorandum and have been adhered to by the United States, but are not yet in force for the Army of the United States, though it is presumed that, after submission to and confirmation by the Senate, they will be duly promulgated and authorized. * * *

In addition to the manifest advantages of a formulation and crys-

tallization of the laws and usages of naval war (a work that has never before been attempted, it is believed, by any other nation), it is also hoped that this code will tend toward the amelioration of the hardships of naval warfare in general, and more particularly in the following respects:

1. By the adoption of all that is of practical value to be found in the additional articles proposed at The Hague to extend the articles of the Geneva Convention to maritime warfare.

2. By restricting to narrow limits the bombardment of unfortified and undefended towns.

3. By forbidding bombardment as a means of levying a ransom upon undefended towns.

4. By forbidding the use of false colors.

5. By forbidding reprisals in excess of the offense calling for them.

6. By exempting coast fishing vessels from capture, where innocently employed.

7. By incorporating the liberal allowances for vessels of the enemy at the outbreak of war, and for blockaded vessels, given in the General Order No. 492, of 1898, of the Navy Department.

8. By providing definitely that free ships make free goods.

9. By giving all the exemption possible to mail steamers in time of war.

10. By exempting neutral convoys from the right of search.

11. By promulgating the general classification of contraband of war in such a manner as to make an international adoption of the general principles possible.

12. By authorizing the use of the regulations for land warfare, whenever applicable, to the naval service of the United States. This has not been officially done heretofore.

I am, very respectfully,

C. H. STOCKTON,
Captain, U. S. Navy,
President Naval War College.

These points and many others were considered and several tentative drafts of the code were made. These were subjected to the criticism of various officers of the Navy and to several other persons outside the Navy. Captain Stockton's untiring labor in the preparation of this valuable compilation deserves high recognition.

The code was finally issued in accord with General Orders No. 551, Navy Department, Washington, June 27, 1900, which states:

The following code of naval warfare, prepared for the guidance and use of the naval service by Capt. Charles H. Stockton, United States Navy, under direction of the Secretary of the Navy, having been approved by the President of the United States, is published for the use of the Navy and for the information of all concerned.

JOHN D. LONG, *Secretary.*

The issue of the code very quickly called forth expressions of opinion from foreign sources, though not especially widely mentioned in the United States. It has been translated several times and has been made the subject of both practical and academic discussion. The following are examples of expression of opinion from English sources:

(From London Times, Friday, April 5, 1901.)

A NAVAL CODE

From a Naval Correspondent

There has been recently issued to the officers of the United States Navy a compact handbook of twenty-seven pages and fifty-five articles comprising laws and usages of war at sea. As the work is quite unknown in England, and as it includes a great deal of matter that must affect the policy of other nations, it is proposed to summarize briefly in this article some of its most salient features. In the first place, we are concerned as to the official sanction to laws given in the general order prefacing the handbook, informing us that it is "Prepared for the guidance and use of the naval service, by Capt. Charles H. Stockton, under the direction of the Secretary of the Navy, having been approved by the President of the United States." * * *

After discussing some of the topics considered in this code, the correspondent further says:

Section V deals with the exercise of the right of search, which is confined to properly commissioned and authorized vessels of war, convoys of neutrals being exempt on the commander of the convoys being able to give proper assurances. The right of search is universally recognized as necessary to a belligerent to enable it to ascertain the nationality of a vessel for the purpose of preventing breaches of blockade, and in other circumstances to seize vessels employed in any capacity for the enemy except that of carrying goods which are not contraband of war.

Further actions justifying seizure are:

1. Attempt to avoid search by escape; but this must be clearly evident.
2. Resisting search with violence.
3. Presenting fraudulent papers.
4. Vessels not being supplied with the necessary papers to establish the object of search.
5. If papers are destroyed, defaced, or concealed.

How far our own naval officers or the foreign office could justify the seizure of the German ships for which we had to pay compensation, under any of the above heads, is a matter of pure conjecture. It may, however, be confidently predicted that their task is not rendered easier by leaving so much to common sense which it is unwise to assume too confidently will be found in the right place at the right time. In the absence of any teaching on international law, except for a few lectures to some fortunate captains and commanders at the Royal Naval College, the least that might be done is to afford them such aid as the American Navy Department does to its own officers. This little code of laws deserves to be noted as another product of the United States Naval War College, to which we owe Captain Mahan's work on sea power; while in comparison Great Britain is content to spend £200 per annum on a naval strategy course, which includes a lecture on naval history, fee of £5 a lecture. Small wonder that in such circumstances the field produces so little, and the official representative of the Admiralty informs the House that his sympathies are with the hostile critics of the naval educational system on this question of the higher training of the navy.

On April 10, 1901, a letter to the Times from the distinguished British authority on international law, Professor Holland, concluded as follows:

It is worth considering whether something resembling the United States code would not be found useful in the British navy. Our code might be better arranged than its predecessor, and would differ from it on certain questions, but should resemble it in clearness of expression, in brevity, and, above all things, in frank acceptance of responsibility. What naval men most want is definite guidance, in categorical language, upon those points of maritime international law upon which the government has made up its own mind.

I am, sir, your obedient servant,

T. E. HOLLAND.

OXFORD, *April 8.*

In the original preparation of the code, certain debatable points were submitted and opinions upon them asked. These were as follows:

1. Prohibition of bombardment of open or unfortified towns on seacoast.

2. Adoption of additional articles of Geneva Convention as formulated at The Hague, with the exception of article 6 and the addition of a proviso to No. 3, that all neutral hospital ships shall, before and during action, attach themselves to one belligerent or the other and be subject to its regulations and fly its flag at the main, with red cross underneath.

3. Prohibition of use of false colors by men-of-war at any time.

4. The abolition of the *jus angariæ* or seizure of neutral vessels or property for war purposes, except in the case of overpowering military necessity.

5. Exemption of fishing boats and fishermen; fish to be paid for if seized as a military necessity.

6. The exercise of the right of inquiry upon neutral men-of-war approaching a blockade or investment. If false colors were universally prohibited this would not be necessary.

7. Ransom of unfortified towns: If refused, the penalty. Should it be forbidden?

8. Should such a status as war rebel be further recognized? *Vide* Lieber's G. O. 100, Inst. to Armies, etc.

9. Is a collier attending a fleet of an enemy guilty of unneutral service or only of carriage of contraband of war? Should vessel and cargo be both seized?

10. Should a continuous-voyage liability be applied to vessels carrying goods that are contraband or presumably for the violation of blockade?

11. Should multiplied retaliation be severely prohibited, *i. e.*, the shooting or hanging of more than one for one, etc.?

At the conferences of the officers at the Naval War College in 1903, the Naval War Code of 1900 was made the subject of discussion. Preparatory to this discussion opinions were sought from the leading authorities upon international law and also from officials

in many foreign states. Opinions in various forms were secured from many countries, including England, France, Germany, and Italy. There was a concurrence among these opinions to the effect that there should be a code including the points upon which states were agreed and those points upon which states could be brought to an agreement. The officers of the conference of 1903, after careful consideration of the code of 1900, came to certain conclusions which are indicated in the following preliminary report of the work of the conferences:

From the extended discussions of the sessions of 1903 and from the consideration of the conclusions of writers and others who have expressed opinions upon the code there come into prominence several points which seem to deserve particular and immediate notice:

1. The Naval War Code is binding upon the Navy of the United States, though it is not binding upon any state with which the United States may be at war.

2. The Naval War Code contains some provisions upon which there is not at present any international agreement, and upon which there are differences of opinion among the authorities upon international law.

3. In case of war, the Navy of the United States might be placed in a position such that the enemy would be free to commit certain acts not forbidden by international law, but sanctioned by general practice, which acts the Navy of the United States could not perform because forbidden by the code.

4. Certain articles of the code should in any case be amended and rewritten.

5. The Navy Department, by General Order 551, of June 27, 1900, published the code, under the approval of the President of the United States, "for the use of the Navy and for the information of all concerned." The code is therefore regarded as the official statement of the United States upon matters of maritime warfare. As such it has received careful and approving attention abroad.

6. It is an almost unanimous opinion at home and abroad that there should be a code for maritime warfare.

7. The Hague Convention of 1899 recommended that various matters relating to maritime warfare upon which the code of the United States touches, as well as some not included, be referred to a subsequent conference. Among these matters were some particularly urged upon the conference of 1899 by the delegates from the United States.

8. The Naval War Code of 1900 was originally drawn with the hope that it possibly "should be presented to other countries as an international *projet*." The code is particularly adapted to serve such a purpose.

9. The United States would be following a course consistent with its past history and consistent with its attitude at the Hague Conference in urging an international agreement upon the rules of war at sea.

As a result of all of these and other considerations it was the opinion unanimously given by those in attendance upon the summer session of 1903 of the Naval War College that it would be advisable:

(1) That the proper steps be taken for the calling of an international conference for the consideration of the matters referred at the Hague Conference and for the formulation of international rules for war at sea.

(2) That the Naval War Code of the United States be offered as a tentative formulation of the rules which should be considered.

(3) That pending the calling of an international conference upon the laws and usages of war at sea, General Order 551 be withdrawn in order that the delegates from the United States might be unrestrained.

(4) That if the code be reprinted before the conference is called, it be issued not as an order, but, with revisions, as a statement of the rules which may be expected to prevail in case of war upon the sea.

The code was revoked by General Order No. 150 in the following February.

GENERAL ORDER {
No. 150. }

NAVY DEPARTMENT,
WASHINGTON, *February 4, 1904.*

By direction of the President, General Order No. 551, dated June 27, 1900, publishing a naval war code for the use of the Navy and for the information of all concerned, is hereby revoked.

WILLIAM H. MOODY,
Secretary.

This Naval War Code was then made the basis of instructions to the United States delegation to the Hague Conference of 1907. In the instructions to the delegates, Secretary Root says:

As to the framing of a convention relative to the customs of maritime warfare, you are referred to the Naval War Code promulgated in General Orders 551 of the Navy Department of June 27,

1900, which has met with general commendation by naval authorities throughout the civilized world, and which, in general, expresses the views of the United States, subject to a few specific amendments suggested in the volume of international-law discussions of the Naval War College of the year 1903, pages 91 to 97. The order putting this code into force was revoked by the Navy Department in 1904, not because of any change of views as to the rules which it contained, but because many of those rules, being imposed upon the forces of the United States by the order, would have put our naval forces at a disadvantage as against the forces of other powers, upon whom the rules were not binding. The whole discussion of these rules contained in the volume to which I have referred is commended to your careful study.

You will urge upon the Peace Conference the formulation of international rules for war at sea and will offer the Naval War Code of 1900, with the suggested changes and such further changes as may be made necessary by other agreements reached at the conference, as a tentative formulation of the rules which should be considered.

It will be seen from this review of the work of the United States Naval War College that it has indeed been a leader from the beginning in the endeavor to formulate unbiased opinion upon the topics relating to the law of maritime warfare, and that it has frequently taken positions which were in advance of those which international conferences have found it possible to agree upon. This is easily seen in the conclusion of 1905 upon the treatment of private property at sea in time of war, which was then formulated as follows:

Innocent neutral goods and ships are not liable to capture.

Innocent enemy goods and ships, except vessels propelled by machinery and capable of keeping the high seas, are not liable to capture.

These conclusions followed the traditional policy of the United States. As the position of the United States in this matter was not supported at The Hague in 1907, the Naval War College will now be obliged to guide its deliberations accordingly.

The officers in attendance upon the Naval War College conferences have shown by their work and discussions that they are most anxious for the adoption of such regulations as will in reality promote the cause of peace and conduce to the well-being of humanity. In the

work of the Naval War College, the international law of the chair is modified by the practical experience of officers and by their knowledge of the action necessary for the preservation of the national safety which is to so great an extent placed in their hands.

In an address of the Assistant Secretary of the Navy, 1901, a case illustrating the work of the Naval War College was mentioned. Rear-Admiral Sampson, visiting the Naval War College soon after the Spanish-American war, "saw suspended on the wall a large chart of the Cuban coast. It bore certain marks that denoted the movements of war vessels. The Admiral took this chart to be a chart that had been prepared for the purpose of illustrating certain features of the Spanish war. It turned out, as a matter of fact, that he was looking at a working model that had been put in use two years before the war in the study of an imaginary campaign against Spain."

As in this case in strategical work, so in the work in international law, the aim is to anticipate so far as possible situations that may arise, to obtain the fullest information as to the proper course of action in accord with opinion and precedent if there be such, and to determine upon the expediency and feasibility of a given course of conduct.

The conclusions reached are tempered by the maturity of judgment of officers long in the service on land and sea who have seen the actual operation of regulations in international relations and who have often been compelled to act at shortest notice without precedent or general order. These officers therefore fully realize the importance and need of reasonable rules and of a code which shall be just to all nations. They are faithfully and unselfishly endeavoring to contribute to a code which shall, if possible, preserve peace and in the unfortunate event of war hasten its termination through conduct that shall be just and humane.

The CHAIRMAN (Mr. Porter). Gentlemen, as one of the delegates to the Hague Conference, I can amply testify, and gladly do so, to the great assistance derived in the conference from the knowledge that has been acquired and the great questions that have been thrashed out by the Naval War College here; and we were most happy in having present a naval delegate in the person of Admiral

Sperry, who has been the president of this War College, and who brought with him to the discussions of the conference a wealth of knowledge upon all these subjects.

The next gentleman whom I shall call upon will be Mr. Jackson H. Ralston, who is a member of the bar of the District, formerly Italian umpire in the Venezuelan Mixed Commissions, and agent of the United States in the celebrated Pious-Fund Case — the first case which was submitted for arbitration to the present Hague Court.

ADDRESS OF MR. JACKSON H. RALSTON,
OF WASHINGTON, D. C.

Mr. President, Ladies, and Gentlemen: I am invited here to-day on, I may say, rather short notice, to say a few words with relation to the subject of the codification of international law. My remarks will cover, perhaps, a rather narrow field, being addressed, as they will be, to the codification of international law in so far as it may relate to matters of claims, rather than to international law as a whole.

That codification is possible of international law as a whole I think can not be doubted. Whether the time has yet arrived for the full and complete performance of that work may be a question; but if the various relations of man and man and between the citizen and the government were capable of codification, and advantageous codification in internal law, may we not believe that the less complicated and the less numerous relations between state and state and states in their various capacities with each other as representative of individual citizens, are capable of this ultimate codification? And the material necessary for it is now, to a large extent, at hand.

In so far as claims are concerned, there is to-day a sufficient wealth of precedent and a sufficient variety of incidents to justify the formation, to a large degree, of the outline — more than the outline — of a code of international law relating to them.

Now, what are some of the subjects to be considered and some of the difficulties to be confronted, and perhaps benefits to be derived? Before there can be any claim, in the fullest sense of the word, made

by one nation upon another there must be antecedent intervention by the nation on behalf of its injured citizen. The law of intervention, it has to be said, is in a most unsatisfactory condition. Each nation to-day is a law unto itself, and the precedent of to-day is not necessarily the precedent for to-morrow.

We have the words of Lord Palmerston, so often quoted, to the effect that while England would not ordinarily interfere on behalf of contract claims, she nevertheless retained the right to do so; her intervention usually being because of a tort committed against a subject.

You have, therefore, an unsatisfactory condition of affairs; each state, as I say, being a law unto itself, and there being no common source of authority to which appeal can be made.

As a primal step, therefore, it would seem to me advantageous that the circumstances under which intervention can be demanded and allowed should be defined, and that the state itself should have a right to say to its citizens that under such and such circumstances they can depend upon an intervention of their government, and that under such other circumstances they have no right — absolutely no right — to ask their government to interfere and present their claims to another state.

On whose behalf should such intervention take place? That question remains unsettled to a degree. We, of course, recognize the right of intervention, circumstances permitting it, on behalf of citizens; but that does not always answer the question. We should also have it established that the right extends not only to citizens but to those who are entitled to the protection of the claimant states. This, it is true, is the ordinary interpretation given to the right of intervention, but it should be fixed.

Is there a right to intervention on behalf of a corporation which has, perhaps, been organized under the laws of the respondent state? There are several cases which answer "Yes." There are others which answer "No." There are equitable considerations entering into the matter affecting the right of intervention.

These questions might all be answered — definitely answered — by means of a code.

Pursuing that branch of the subject further for a moment, under what circumstances can an intervention exist? Should there be a previous denial of justice? What classes of offenses are of such nature as to require the claimant government to have its citizens exhaust local remedies before appealing for international relief? This question is absolutely open, so far as definite, ultimate expressions of opinion are concerned. There are general tendencies, but the last word has not been said. The last word should be said in a definite manner by agreement between states.

But pass, if you will, over the question of intervention. We go, let us suppose, to the formation of a commission which will have in view the determination of whole series of disputes between nations. One of the first matters it will be called upon to determine will be the interpretation of its protocol. Are there fixed canons of interpretation? While there are generally accepted principles, yet to-day the commissioner or umpire who desires to perform his duty and properly interpret the protocol before he comes to act will go back to the old principles laid down by Vattel, rather than rely upon later utterances, excellent as many of them are, to learn the rules of interpretation. But these rules have not a binding sanction, as they would have were the matter properly codified and agreed upon between nations.

Next, the commission may have to consider the rules of evidence. Fortunately, this is an easy matter, so far as the opinions of commissions are concerned. As a rule, they have followed the suggestion that "there are no snakes in Ireland." There are no rules of evidence generally so far as commissions are concerned. Anything is receivable, under the protocols. I speak now as a general rule. But there doubtless are reasons for the establishment of proper rules of evidence or limitations upon the acceptance of evidence.

Questions of conflict of laws arise — whether the law of the demanding nation or whether the law of the responding nation should prevail. There is no fixed authority determining questions of that kind. Such questions arose before the recent Venezuelan commissions, and were, as I hope and as I believe, generally properly decided; but they were decided on general principles and not by reason of any existing fixed, immutable standards.

Questions of citizenship arise before every commission. There is no fixed way to-day to determine questions of double citizenship. The commissions are left without guide.

Questions of the status of married women arise. Commissions are guided as best they can be from the determinations upon the subject given by local tribunals.

Tribunals sometimes receive help from eminent international writers, but upon many of the points of citizenship there are disputes which could very well be removed.

There are questions arising before them continually as to the weight to be given local laws. How far shall they be controlling? Definite answers should be given.

A very interesting question relating to the matter of successions as to personal property came before the recent Venezuelan commissions. The question, in a general way, was whether the rule of many of the European nations, to the effect that succession, or the law of succession, was determined by the nationality of the party, should be adopted, or whether the law of the United States, of England, and of one or two European nations, to the effect that successions were determined by the law of the domicile of the deceased at the time of such decease — which rule should prevail? It was left practically to the fancy — to the judgment — of the individual umpire.

The question came before the American umpires, and they, governed and controlled, undoubtedly, by their early education, decided in favor of the American and English rule. Their decision — correct as we would esteem it from the mode of thought we have, from the education we have received — would undoubtedly be regarded as incorrect by the majority of European publicists. This question should be determined for the control of commissions.

What interest should be allowed, when allowable, on claims, and whether interest should be allowed to all to the date of award, are questions likewise rarely considered in the preparation of protocols, and can be answered only by the particular predilection of the umpire or of the commission.

We may pass to a variety of questions upon which commissions

have decided and may decide in different ways — perhaps substantive international law — which might properly have been solved by a code prepared particularly for commissions.

Let us take the matter of forced loans. Are they internationally legal or illegal? Dr. Lieber decided, in the Mexican-American Commission of 1869, that forced loans were illegal and gave awards where they had been exacted of American citizens. When he retired from the commission, Sir Edward Thornton succeeded him. Sir Edward Thornton decided that forced loans could be collected, and did not — certainly at least under the wording of that particular treaty (the same under which Dr. Lieber had acted) — constitute ground for international claim.

When the same question arose in Venezuela, I think without exception the umpires decided that forced loans could be recovered for; that they did constitute a ground of international reclamation. Such a question should be set at rest finally.

No question received greater consideration in Venezuela than the liability of the state for the acts of unsuccessful revolutionists. The United States, as we know, had denied all liability on her part for the acts of the Confederate government, and has successfully maintained that position. Sir Edward Thornton, in the commission to which I have alluded, took the same position. Other commissions have done the same; and yet there was a very distinct and determined fight upon the subject — a bitter fight, if you will — made before the various commissions in Venezuela. The general tendency of the European commissioners and umpires was to hold Venezuela responsible, on one theory or another, for the acts of unsuccessful revolutionists; even going so far in one or two cases as to hold Venezuela responsible for obligations given by revolutionary generals who had failed of success.

The attitude of the American commissioners was distinctly different, and they held as a matter of right that Venezuela was not responsible for the acts of unsuccessful revolutionists; there being but a slight departure from this position on the part of a single umpire.

Now, the Europeans had strong support for their position. Without discussing their argument, the Institute of International Law,

in undertaking to form a segment of a code upon the subject, had given color to the position taken by European umpires and commissioners — given color wrongfully. It had not, however, said the final word; because its expressions were, after all, only expressions of opinion, and a concrete case or concrete cases were not presented to and discussed by the Institute of International Law.

Again, there are important questions which should receive the attention of the framers of a code relating to the responsibility of states which have inserted in their constitutions or in their contracts or concessions what is known as a “Calvo clause.” Those of you who have read, as doubtless many of you have, Professor Moore’s recent Digest of International Law will have seen some account of the different views which have been taken by umpires with regard to this question.

There is serious need for a final, definite expression of opinion, formulated in the shape of a code or otherwise, as to the binding character of the so-called “Calvo clause” upon claimant nations, or even under what circumstances it may be binding upon the individual claimants themselves.

Measure of damages is something requiring consideration, and upon which commissions have differed — differed honestly and differed reasonably — but which should receive attention.

In approaching the end of the brief statement I have to make before you to-day I come to the barring of remedies. How far are nations to be held entitled to the benefit of prescription? It has been held many times, notably it was held in the Pious-Fund case, that local laws of prescription were not binding internationally. But although laws of prescription are not binding, ought not the principle of prescription to be recognized? It has been so held several times by commissions — by the commission of which Mr. Little and Mr. Findlay were members, in the readjustment of the disputes which came before the Venezuelan commissions of 1865, and by several of the commissions in Caracas; but there are differences of opinion as to whether and under what circumstances prescription itself may be invoked in favor of a respondent nation.

This is a class of questions particularly to be treated of in an international code relating to claims.

What constitutes nonneutral conduct, by virtue of which a claimant will lose his right to recover before a commission? There has been no satisfactory treatment of this subject.

Then the question comes of interest on awards provided for by the protocol itself or not allowed, as the case may be, but about which commissions have differed.

In several important cases which came up before the recent Venezuelan commissions it was decided by the American commissioners that they were without power to allow interest on the awards they gave. But such has not been the universal rule.

Mr. Chairman, I have reviewed, briefly, some only of the questions which ought to be met and determined by a code. I have touched upon some which are the most important, perhaps, which have offered the most of difficulty in commissions, but there are many others whose importance is only secondary and which ought to be amply covered.

I thank you, Mr. Chairman and gentlemen of the convention.

The CHAIRMAN (Mr. Porter). Gentlemen, I shall now have the very great pleasure of calling upon Mr. Takahashi, professor of international law in the Imperial University of Tokyo, who will speak upon some peculiar things in the recent Russo-Japanese war.

ADDRESS OF MR. S. TAKAHASHI,
OF TOKYO, JAPAN

Mr. President, Ladies, and Gentlemen: It is a great honor you confer upon me to be invited to read a paper before the members of this Society, representing as you do the most learned citizens of the United States and the most distinguished men in the science of international law. My subject is "Some peculiar incidents bearing on prize law."

During the Russo-Japanese war many cases were brought before the Japanese prize courts. The number of vessels, arranged according to nationality, is as follows:

Russian, sixteen; all condemned.

British, twenty-two; seventeen condemned and five released by the decisions of prize courts.